

JS-6

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KELLEN CLARKE,  
Plaintiff,

v.

IAN PARKINSON, Sheriff, et al.,  
Defendants.

Case No. CV 23-780- ODW (MRW)

**ORDER DISMISSING ACTION  
WITH PREJUDICE**

The Court dismisses the action with prejudice for failure to prosecute and for failure to respond to court orders.

\* \* \*

1. This is a pro se civil rights action. Plaintiff attempts to allege a variety of claims against San Luis Obispo County (a) probation office personnel regarding his most recent criminal case and (b) jail and medical staff regarding his most recent incarceration.<sup>1</sup> (Complaint.)

<sup>1</sup> Plaintiff previously tried to sue various county officials for civil rights violations related to earlier periods in custody. CV 20-9708, CV 20-8205, 20-2725, 19-5112, 18-6452 ODW (MRW) (C.D. Cal.). None of these actions led

1           2.     Because Plaintiff paid the filing fee in full, Magistrate Judge  
2 Wilner reviewed Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2).  
3 (Docket # 7.) The magistrate judge dismissed the original complaint with  
4 leave to amend for a variety of substantive and procedural reasons;  
5 namely, the complaint failed to allege a comprehensible, non-conclusory  
6 constitutional claim, and failed to assert a basis for federal court  
7 intervention with Plaintiff's criminal case.

8           3.     Plaintiff filed a First Amended Complaint. (Docket # 12.)  
9 Judge Wilner concluded that the amended pleading was defective because  
10 it pled "fewer facts to explain the basis for Plaintiff's causes of action. It  
11 also continues to advance unintelligible claims" against the named local  
12 officials. (Docket # 13.) The First Amended Complaint was dismissed with  
13 leave to amend.

14           4.     Plaintiff's Second Amended Complaint (Docket # 17) fared no  
15 better. That version of the complaint abandoned Plaintiff's claims against  
16 the local probation office and the challenge to his most recent criminal  
17 case. Rather, the Second Amended Complaint attempted to focus on his  
18 claims of inadequate health care while in custody.

19           5.     However, in screening the complaint, the magistrate judge  
20 concluded that Plaintiff's conclusory allegations that jail physicians "denied  
21 'all requests' for medical treatment" were belied by statements,  
22 attachments, and other medical records that Plaintiff submitted with the  
23 complaint regarding his considerable medical treatment. (Docket # 18 at 2-  
24 3.) Further, the amended complaint "fail[ed] to allege any facts sufficient  
25 to establish the knowledge of the practitioners or plausibly accuse the  
26

27 \_\_\_\_\_  
28 to relief. All were dismissed at the pleading stage or when Plaintiff failed to  
respond to a defense motion.

1 physicians of the requisite misconduct” to the level required under Section  
2 1983 and Ninth Circuit case law. (Id.)

3 6. The order dismissing the Second Amended Complaint gave  
4 Plaintiff the opportunity to further amend his claims by August 31, 2023,  
5 to state a plausible cause of action. The magistrate judge expressly  
6 informed Plaintiff that failure to do so would lead to dismissal of the action  
7 under Federal Rule of Civil Procedure 41 and Applied Underwriters, Inc. v.  
8 Lichtenegger, 913 F.3d 884, 892 (9th Cir. 2019).

9 7. To date, Plaintiff has not filed a new iteration of his complaint.

10 \* \* \*

11 8. Rule 41(b) provides that if a plaintiff “fails to prosecute or to  
12 comply with these rules or a court order, a defendant may move to dismiss  
13 the action or any claim against it.” Dismissal also may be ordered by the  
14 Court sua sponte. Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962).

15 9. Rule 41(b) further authorizes a court to dismiss a civil action  
16 when a plaintiff has not filed a required pleading “after being given leave  
17 to do so and has not notified the court of his intention not to file” that  
18 document. Harris v. Magnum, 863 F.3d 1133, 1142 (9th Cir. 2017). Rule  
19 41(b) applies when a court “mandate[s] the filing” of a pleading and  
20 “indicate[s] that failure to do so would result in dismissal” under the rule.  
21 Applied Underwriters, 913 F.3d at 892.

22 10. A district court must consider a variety of factors before  
23 dismissing an action under Rule 41(b). They are: the public’s interest in  
24 the expeditious resolution of litigation; the court’s need to manage its  
25 docket; the risk of prejudice to defendants; the public policy favoring  
26 disposition of cases on their merits; and the availability of less drastic  
27  
28


1 alternatives to dismissal. Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th  
2 Cir. 2010); Yourish v. Cal. Amplifier, 191 F.3d 983, 986 (9th Cir. 1999).

3 \* \* \*

4 11. In the present action, dismissal is appropriate. Despite  
5 receiving considerable guidance from the magistrate judge regarding  
6 defects with his first three complaints, Plaintiff failed to file a new version  
7 that plausibly stated a cause of action. Plaintiff's failure to respond to the  
8 Court's order demonstrates that he has no interest in advancing his most  
9 recent case. That parallels the outcome of Plaintiff's previous half-dozen  
10 actions in this district.

11 12. By contrast, the Court, the defense, and the public have a  
12 strong interest in terminating this action. Furthermore, because Plaintiff  
13 is a pro se litigant who has not abided by the Court's recent order, no  
14 sanction short of dismissal will be effective in moving this case forward.  
15 Omstead, 594 F.3d at 1084. The Court finds that dismissal is appropriate  
16 under Rule 41(b). Applied Underwriters, 913 F.3d at 892.

17  
18 Therefore, the present action is hereby DISMISSED with prejudice.  
19 IT IS SO ORDERED.



20  
21 Dated: September 15, 2023

22 HON. OTIS D. WRIGHT II  
23 UNITED STATES DISTRICT JUDGE

24 Presented by:



25  
26  
27 HON. MICHAEL R. WILNER  
28 UNITED STATES MAGISTRATE JUDGE